

Message Text

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ACTION EB-07

INFO OCT-01 IO-13 ISO-00 XMB-02 OPIC-03 AF-10 ARA-10

EA-07 EUR-12 NEA-10 AGRE-00 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05 L-03

LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05 SS-15

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FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 9536

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E.O. 11652: N/A

TAGS: GATT ETRD

SUBJECT: GATT COUNCIL -- DISC

PASS TREASURY FOR ALBRECHT

1. GATT SECRETARIAT HAS CIRCULATED ADDITIONAL FRENCH WRITTEN STATEMENT ELABORATING ON FRENCH CLAIM THAT THE PANEL USED TOO BROAD A DEFINITION OF EXPORTS IN FINDING THAT THE FRENCH TAX PRACTICE VIOLATED THE GATT. COPY BEING HANDCARRIED WASHINGTON BY WOLKOW FOR ALBRECHT.

2. FRENCH STATEMENT IS LATEST SALVO IN CONTINUING EC OFFENSIVE TO BREAK OFF COUNCIL CONSIDERATION OF DISC FROM PANEL REPORTS ON OTHER THREE TAX PRACTICES. WE HAVE CANVASSED OTHER KEY DELS AND FIND ONLY NORDICS LIKELY TO SUPPORT COUNCIL ADOPTION OF ALL REPORTS. EVEN THEY, HOWEVER, SAY THEY ARE UNDER SOME PRESSURE FROM EC TO REMAIN QUIET AND THEIR FINAL INSTRUCTIONS COULD BE MORE ACCOMMODATING TO EC. OTHERS ARE LIKELY TO REMAIN SILENT OR, LIKE THE CANADIANS, CALL FOR COUNCIL ADOPTION OF DISC WHILE ADMITTING THAT OTHER REPORTS REQUIRE FURTHER CONSIDERATION. THUS, LENGTHY
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ARGUMENTS OF NETHERLANDS, BELGIUM AND FRANCE PLUS BASIC DESIRE BY OTHERS TO SEE DISC ABOLISHED ARE BEGINNING TO HAVE THEIR DESIRED EFFECT OF RAISING QUESTION IN DELS' MINDS THAT THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN PANEL FINDINGS ON DISC AND OTHER TAX PRACTICES.

3. THE FRENCH MEMORANDUM CONTAINS TWO PARTS, ONE DEFINING EXPORT

ACTIVITY IN ECONOMIC AND GATT TERMS, SHOWING HOW THE PANEL WENT BEYOND THE GATT DEFINITION (AS INTERPRETED BY THE FRENCH) AND A SECOND SECTION DISCUSSING THE CONSEQUENCES OF THE PANEL'S DEFINITION OF EXPORTS (EXCERPTS IN SEPTEL).

4. AS THE FRENCH STATEMENT CONCLUDES, THE FRENCH (AND OTHERS) SEE THE PANEL REPORTS AS A BASIC ATTACK ON THE DESTINATION PRINCIPLE OF TAXATION AND APPEAR DETERMINED TO CONTINUE BLOCKING COUNCIL ADOPTION OF THE PANEL REPORTS ON THEIR PRACTICES.

5. COMMENT: THE FRENCH AND OTHERS CONTINUE TO SUCCEED IN PUTTING THEIR CASE (I.E., A DEFENSE OF THE DESTINATION PRINCIPLE) BEFORE THE COUNCIL IN THE GUISE THAT THE PANEL WENT TOO FAR IN ITS DEFINITION OF EXPORT ACTIVITY. WHILE WE HAVE SOUGHT TO AVOID REOPENING THE PANEL DECISION IN THE COUNCIL, THE ONE-SIDED OFFENSIVE BY THE EC IS RAPIDLY ISOLATING THE U.S. IT MIGHT BE HELPFUL TO OUR CASE AND COULD SHOW THE COUNCIL THAT THE COMPLEXITIES INVOLVED ARE BEYOND COUNCIL COMPETENCE, IF WE WERE TO INDICATE AT THE JULY 26 COUNCIL THAT WE WOULD SIMILARLY CIRCULATE A WRITTEN MEMORANDUM STATING THE U.S. CASE AND REBUTTING THE FRENCH STATEMENTS. ALTERNATIVELY, U.S. REP COULD DRAW UPON ORIGINAL U.S. SUBMISSION TO THE PANELS TO MAKE REBUTTAL STATEMENT IN COUNCIL.

6. ACTION REQUIRED: WASHINGTON GUIDANCE FOR U.S. RESPONSE AT JULY 26 COUNCIL.

VANDEN HEUVEL

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